

REMARKS

Claims 1-15 and 17-30 were examined and reported in the Office Action. Claims 1-3, 10, 13-15, 20, 23 and 29 are rejected. Claims 1, 3, 7, 13 and 23 are amended. New claim 31 is added. Claims 1-15 and 17-31 remain.

Applicant requests reconsideration of the application in view of the following remarks.

I. Substance of the Interview

On June 26, 2007 Applicant and the Examiner participated in an Interview. During the interview, the prior art was discussed. The differences were pointed out by Applicant and it was suggested to amend the claim language to further distinguish Applicant's invention from the prior art. The Examiner further suggested Applicant focus on the similarity in size and radii of the two half shells regarding U.S. Patent No. 6,501,430 issued to Esselink. Applicant appreciates the Examiner's suggestion that limitations distinguishing the enclosing of the transponder within the two half shells could overcome the cited prior art.

II. 35 U.S.C. §102(b)

It is asserted in the Office Action that claims 1-3, 10, 13-15, 20, 23 and 29 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,501,430 issued to Esselink ("Esselink"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2131,

'[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). 'The identical invention must be shown in as complete detail as is contained in the ... claim.' (Richardson v. Suzuki Motor

Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

It is asserted in the Office Action that Esselink discloses two half-shelves. Esselink discloses a shell 1, which is formed by a wall 2 and a peripheral edge 4, the latter providing a slot into which at least one winding of a transponder is fitted. Esselink does not describe two half-shells that can be fitted together with the transponder enclosed within the two-half shells. In Esselink the transponder is fitted into the open topped compartment 10 (which is formed as part of the lower shell).

Esselink does not teach, disclose or suggest Applicant's amended claim 1 limitations of

[a]n electronic button tag for tagging and identifying cattle comprising a transponder, programmable or not, enclosed in a shell, said shell comprising an open-ended or blind axial transverse passage for a fixing means to the ear of the animal, wherein the shell is made from two half-shells namely a lower half-shell and an upper half-shell, which are assembled together at a median plane which is disposed transversely to the axial passage opening for the fixing means, and the transponder is enclosed within the two half-shells,

Applicant's amended claim 13 limitations of "the transponder is enclosed within without compression between the two shell portions using an adhesive and the two shell portions are assembled by means of a laser weld,"

nor Applicant's amended claim 23 limitations of

a transponder, programmable or not, enclosed within a shell, the shell is made from two half-shells namely a lower half-shell and an upper half-shell, which are assembled together at a median plane which is disposed transversely to the axial passage opening for the fixing means.

Therefore, since Esselink does not disclose, teach or suggest all of Applicant's amended claims 1, 13 and 23 limitations, Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(b) has not been adequately set forth relative to Esselink. Thus, Applicant's amended claims 1, 13 and 23 are not anticipated by Esselink. Additionally, the claims that directly or indirectly depend on claims 1, 13 and 23, namely claims 2-3 and 10, 14-15 and 20, and 29, respectively, are also not anticipated by Esselink for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejections for claims 1, 2, 13-15 and 20 are respectfully requested.

III. Allowable Subject Matter

Applicant notes with appreciation the Examiner's assertion that claims 4-9, 11, 12, 17-19, 21, 22, 24-28 and 30 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant respectfully asserts that claims 1-15 and 17-30, as they now stand, are allowable for the reasons given above.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-15 and 17-31 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on March 20, 2007, Applicant respectfully petitions the Commissioner for a two (2) month extension of time, extending the period for response to August 20, 2007. The Commissioner is hereby authorized to charge payment to Deposit Account No. 02-2666 in the amount of \$225.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(2) small entity. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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Dated: August 1, 2007

By: _____

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

Jean Svoboda

Date: August 1, 2007